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FACSIMILE INFORMATION SHEET

To: Group Art Unit 1636      From: Kathryn Doyle, Ph.D.      Direct Dial: 215-988-2902  
Date: October 14, 2005      Document Name: Revocation of Power of Attorney and Certificate of  
Merger  
Number of Pages Including Cover: 19      Fax Number: 571-273-8300

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Message:

Attached is a Revocation and Power of Attorney and a Certificate of Merger

Client/Matter No.: 46675-5004US1

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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED VIA FACSIMILE TO OFFICE OF INITIAL PATENT EXAMINATION (OIPE), CENTRAL FAX NO. (571) 273-8300, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450, ON THE DATE INDICATED BELOW.

BY: Robert ConwayDATE: 10/14/05**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re:	Patent Application Of	:	Group Art Unit:
	Rolf Menzel	:	1636
Serial No.:	09/920,118	:	Examiner:
Filed:	July 31, 2001	:	Riggins, Patrick S.
For:	Methods and Compositions for Directed Gene Assembly	:	Attorney Docket No.:
		:	46675-5004US1

Mail Stop OIPE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REVOCATION OF POWER OF ATTORNEY AND APPOINTMENT OF  
NEW ATTORNEY BY APPLICANT/INVENTOR PURSUANT TO 37 CFR 1.36**

Applicants, by virtue of assignment and merger of record filed simultaneously herewith of the entire right, title and interest under 37 CFR 3.71, hereby revoke all previous powers of attorney in the above-identified application and appoint the attorneys/agents associated with Customer No. 23973, namely:

**DRINKER BIDDLE & REATH LLP**

One Logan Square  
18<sup>th</sup> & Cherry Streets  
Philadelphia, PA 19103-6996  
Tel.: (215) 988.2700  
FAX.: (215) 988.2757

to prosecute the above-identified application and to transact all business in the Patent and Trademark Office in connection therewith.

Respectfully submitted,

ATHENA BIOTECHNOLOGIES, INC.

Oct. 13, 2005  
Date

B. Marrs  
Name: Barry Marrs, Ph.D.  
CEO

/dp

# Delaware

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*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"VERDIZYME, INC.", A DELAWARE CORPORATION,

WITH AND INTO "PHARMALEADS, INC." UNDER THE NAME OF "ATHENA BIOTECHNOLOGIES, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE FOURTEENTH DAY OF JANUARY, A.D. 2005, AT 4:38 O'CLOCK P.M.

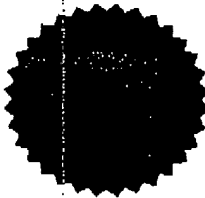
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

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AUTHENTICATION: 3621556

DATE: 01-18-05



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

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State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 04:38 PM 01/14/2005  
FILED 04:38 PM 01/14/2005  
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**CERTIFICATE OF MERGER OF**

**VERDIZYME, INC.**  
(a Delaware corporation)

**WITH AND INTO**

**PHARMALEADS, INC.**  
(a Delaware corporation)

(pursuant to Section 251 of the Delaware General Corporation Law)

**PHARMALEADS, INC.**, a corporation organized and existing under the laws of the State of Delaware (the "Company"), hereby certifies as follows:

**FIRST:** The names and states of incorporation of each of the constituent corporations of the merger are as follows:

<u>NAME</u>	<u>STATE OF INCORPORATION</u>
PharmaLeads, Inc.	Delaware
VerdiZyme, Inc.	Delaware

**SECOND:** An Agreement and Plan of Merger among the parties to the merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 251 of the General Corporation Law of the State of Delaware.

**THIRD:** The constituent corporation surviving the merger is PharmaLeads, Inc. (the "Surviving Corporation"). Immediately following the merger, the name of the Surviving Corporation of the merger is Athena Biotechnologies, Inc.

**FOURTH:** The Certificate of Incorporation of the Surviving Corporation shall be amended and restated to read in its entirety as set forth on Exhibit A attached hereto.

**FIFTH:** The executed Agreement and Plan of Merger is on file at the principal place of business of the surviving corporation. The address of said principal place is 1090 Elkton Road, Newark, Delaware 19711-3507.

**SIXTH:** A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation on request and without cost to any stockholder of any constituent corporation.

**SEVENTH:** This Certificate of Merger shall be effective as of January 14, 2005 at 11:59 p.m.

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IN WITNESS WHEREOF, PharmaLeads, Inc., a Delaware corporation, has  
caused this Certificate to be signed by Bernard Link, its President this 14<sup>th</sup> day of  
January, 2005.

PHARMALEADS, INC.,  
a Delaware corporation

By: Bernard Link  
Bernard Link, President

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**EXHIBIT A**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**ATHENA BIOTECHNOLOGIES, INC.**

**ARTICLE I**  
**NAME**

The name of the corporation is Athena Biotechnologies, Inc.

**ARTICLE II**  
**REGISTERED AGENT**

The address of the registered office of the Corporation in the State of Delaware is 1090 Elkton Road, in the City of Newark, County of New Castle. The name of its registered agent at such address is Barry L. Marrs.

**ARTICLE III**  
**PURPOSE**

The purpose of this Corporation is to engage in and carry on any lawful business or trade and exercise all powers granted to a corporation formed under the General Corporation Law of the State of Delaware, including any amendments thereto or successor statute that may hereafter be enacted.

**ARTICLE IV**  
**CAPITAL STOCK**

1. Authorization, Designation and Amount. The total number of shares of all classes of stock which the Corporation shall have authority to issue is Ten Million (10,000,000) shares consisting of: 1,000,000 shares of Series A Preferred Stock, par value \$0.001 per share (the "Series A Preferred Stock"); and Nine Million (9,000,000) shares of Common Stock, par value \$0.001 per share (the "Common Stock"). The number of shares, powers, terms, conditions, designations, preferences and privileges, and voting, relative, participating, optional and other special rights, and qualifications, limitations and restrictions, of the Series A Preferred Stock and the Common Stock shall be as set forth in this Article IV.

**PART A. SERIES A PREFERRED STOCK**

1. Designation. The powers, terms, conditions, designations, powers, preferences and privileges, relative, participating, optional and other special rights, and qualifications, limitations and restrictions, if any, of the Series A Preferred Stock shall be as set forth in this Part A.

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2. Ranking. The Corporation's Series A Preferred Stock shall rank, upon Liquidation, senior and prior to the Corporation's Common Stock and any other class or series of stock of the Corporation.

3. Dividends. The holders of record of Series A Preferred Stock (collectively, the "Series A Preferred Stockholders") shall be entitled to receive, out of funds legally available therefor, such dividends as may be declared from time to time by the Board of Directors of the Corporation (the "Board"), but only when, as, and if declared by the Board; provided that, so long as any Series A Preferred Stock is outstanding, the Corporation shall not declare or pay any dividend or make any distribution (whether in cash, shares of capital stock of the Corporation or other property) on the Common Stock or any other class or series of stock ranking junior to the Series A Preferred Stock, unless prior thereto or simultaneously therewith an equal dividend shall be paid on the Series A Preferred Stock (on an as-converted to Common Stock basis).

4. Liquidation Preferences. In the event of any liquidation, dissolution or winding-up of the affairs of the Corporation (collectively, a "Liquidation"), whether voluntary or involuntary, the assets and funds of the Corporation legally available for distribution to its stockholders, whether from capital, surplus or earnings, shall be distributed as follows:

(a) Preferred Distribution. Before any payment of cash or distribution of other property shall be made to the holders of record of the Common Stock (the "Common Stockholders") or the holders of any other class or series of stock ranking junior to the Series A Preferred Stock, each Series A Preferred Stockholder shall be entitled to receive an amount equal to the greater of (i) the original issuance price of the Series A Preferred Stock of \$0.714285 (the "Original Series A Issuance Price") per share of Series A Preferred Stock (as appropriately adjusted for any stock dividends, splits, combinations, divisions, recapitalizations or similar transactions (collectively, "Recapitalizations") affecting the Series A Preferred Stock after the date of original issuance of the first share of the Series A Preferred Stock (the "Original Series A Issuance Date")), and (ii) the amount such Series A Preferred Stockholder would receive if all of the outstanding shares of Series A Preferred stock were converted into Common Stock immediately prior to the Liquidation (the "Series A Liquidation Preference"). If, upon any Liquidation, the assets and funds of the Corporation legally available for distribution to its stockholders are insufficient to permit the payment to the Series A Preferred Stockholders of the full Series A Liquidation Preference, then the entire assets and funds legally available for distribution to its stockholders shall be distributed ratably among the Series A Preferred Stockholders in proportion to the full preferential amount each such holder is entitled to receive pursuant to this Section A.4(a).

(b) Distribution of Remaining Assets. Following the payment to the Series A Preferred Stockholders of the Series A Liquidation Preference, any remaining assets of the Corporation legally available for distribution to its stockholders shall be distributed among the Common Stockholders pro rata based on the total number of shares of Common Stock held by each such holder on an as-converted to Common Stock basis.



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5. Conversion Rights.

(a) Voluntary Conversion. Subject to and in compliance with this Section A.5, any shares of Series A Preferred Stock may, at the option of the holder thereof, be converted at any time or from time to time, into fully paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a Series A Preferred Stockholder shall be entitled upon conversion shall be the product obtained by multiplying the number of shares of Series A Preferred Stock being converted by the Series A Conversion Rate (as defined in Section A.5(c) hereof) in effect at the time of conversion.

(b) Automatic Conversion.

(i) Events Giving Rise to Automatic Conversion. Each outstanding share of Series A Preferred Stock shall be converted automatically, without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent, into that number of shares of Common Stock into which such shares of Series A Preferred Stock are convertible at the then effective Series A Conversion Rate upon the occurrence of the earlier to occur of the following:

(A) The consummation of the Corporation's first firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), covering the offer and sale by the Corporation of Common Stock at a public offering price per share that is not less than four times the Original Series A Issuance Price (as appropriately adjusted for any Recapitalizations affecting the Series A Preferred Stock after the Original Series A Issuance Date) and with a total in gross offering proceeds of not less than \$35,000,000 (prior to deducting underwriter discounts and commissions and expenses of the offering) (a "Qualified Public Offering"); and

(B) The approval of such conversion by the written consent or vote of the holders of a majority of the outstanding shares of Series A Preferred Stock.

(c) Conversion Rate. The Series A Conversion Rate in effect at any time shall be the quotient obtained by dividing the Original Series A Issuance Price by the Series A Conversion Price (as defined in Section A.5(d) hereof and as adjusted pursuant to Section A.5(f) hereof) (the "Series A Conversion Rate").

(d) Conversion Price. Subject to adjustment in accordance with Section A.5(f) hereof, the "Series A Conversion Price" shall initially be an amount equal to the Original Series A Issuance Price.

(e) Mechanics of Conversion.

(i) Voluntary Conversion. In order to effect a voluntary conversion of Series A Preferred Stock, the holder thereof shall provide written notice to the Corporation that it elects to convert the same into Common Stock, and shall deliver such notice to the office of the Corporation or of any transfer agent for such shares. Such voluntary conversion shall be deemed to have been made immediately prior to the close of business on the

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date of surrender of the certificate(s) representing the shares of Series A Preferred Stock to be converted.

(ii) Automatic Conversion.

(A) In the case of an automatic conversion in connection with a Qualified Public Offering, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriter(s) of the sale of securities pursuant to such Qualified Public Offering, in which case the person or persons entitled to receive the Common Stock issuable upon such conversion shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such Qualified Public Offering.

(B) In the case of an automatic conversion pursuant to Section A.5(b)(i)(B) hereof, the shares of Series A Preferred Stock subject to the automatic conversion shall be converted automatically without any further action by the holders of such shares, and the person or persons entitled to receive the Common Stock issuable upon such conversion shall be deemed to have converted such Series A Preferred Stock on the effective date of such written consent or vote.

(iii) Surrender of Certificates; Deliveries by Corporation.

Before delivery to any person of certificates representing shares of Common Stock issued upon voluntary or automatic conversion of shares of the Series A Preferred Stock, the holder of such Series A Preferred Stock shall surrender the certificate or certificates for such Series A Preferred Stock, duly endorsed or assigned in blank, at the office of the Corporation or of any transfer agent for such shares (or shall notify the Corporation or its transfer agent that such certificates have been lost, stolen, or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates) and shall provide a written declaration of the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If a Series A Preferred Stockholder shall surrender more than one stock certificate for shares of Series A Preferred Stock to be converted at any one time, the number of such shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series A Preferred Stock so surrendered for conversion. The Corporation shall, as soon as practicable after receipt of the certificate or certificates for the Series A Preferred Stock subject to such conversion (or, in the case of a lost certificate, the agreement and indemnification referred to above), issue and deliver at such office to such holder of Series A Preferred Stock, (A) a certificate or certificates for the number of full shares of Common Stock to which such holder shall be entitled as aforesaid, (B) in the event of the conversion of only a portion of the shares covered by a certificate representing Series A Preferred Stock, a new stock certificate representing the number of unconverted shares of Series A Preferred Stock, (C) a check payable to the holder for any cash amounts payable as the result of a conversion into fractional shares of Common Stock pursuant to Section A.5(e)(v) hereof, and (D) payment of any declared or accrued but unpaid dividends on the shares of Series A Preferred Stock being converted up to and including the date of conversion, unless such dividends are waived pursuant to Section A.5(b)(iii) hereof, by delivery of a check payable to the holder, or to the extent the funds of the Corporation legally available for the payment of dividends are insufficient to pay the full amount

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of such dividends in cash, a certificate for shares of Common Stock (at the then current market price of a share of Common Stock determined in the manner described in Section A.5(e)(v) hereof).

(iv) Rights Following Conversion. From and after the effective date of any voluntary or automatic conversion pursuant to this Section A.5, without any further action by any holder of shares of Series A Preferred Stock being converted and whether or not such shares are surrendered to the Corporation or its transfer agent: (A) all rights of such holder with respect to any Series A Preferred Stock subject to such conversion, except the right to receive shares of Common Stock and any applicable cash amounts in accordance with this Section A.5, shall cease; (B) the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date; and (C) the shares of Series A Preferred Stock subject to such conversion shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

(v) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of shares of Series A Preferred Stock. The Corporation shall pay a cash adjustment for such fractional interest in an amount equal to the then current market price (as defined below) of a share of Common Stock multiplied by such fractional interest. The then current market price per share of Common Stock at any date shall be deemed to be (A) the highest price per share which the Corporation could obtain from a willing buyer (who is not a current employee or director) for shares of Common Stock sold by the Corporation, from authorized but unissued shares, as determined in good faith by the Board or (B) in the case of an automatic conversion pursuant to a Qualified Public Offering, the per share price of the Qualified Public Offering.

(f) Conversion Price Adjustments. The Series A Conversion Price shall be subject to adjustment from time to time as follows:

(i) Anti-Dilution Adjustment.

(A) In the event the Corporation shall at any time or from time to time after the Original Series A Issuance Date issue any Additional Shares (as defined in Section A.5(f)(v) hereof), otherwise than as provided in Sections A.5(f)(ii), (iii) or (iv) hereof, without consideration or for a consideration per share less than the Series A Conversion Price in effect immediately prior to such issuance, then and in such event, the Series A Conversion Price in effect immediately prior to each such issuance shall be reduced, concurrently with such issuance, to a price calculated to the nearest whole cent determined by multiplying the then effective Series A Conversion Price by a fraction (x) the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to the issuance of such Additional Shares plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares so issued would purchase at the then effective Series A Conversion Price, and (y) the denominator of which shall be the sum of the number of shares of Common Stock outstanding immediately prior to the issuance of such Additional Shares plus the number of Additional Shares so issued. Such adjustment shall be made successively whenever any Additional Shares are issued without

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consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance and shall become effective immediately after the Additional Shares are issued. For purposes of the above calculation, the number of shares of Common Stock outstanding immediately prior to such issuance shall be calculated on an as-converted to Common Stock basis, as if all then outstanding Series A Preferred Stock had been fully converted immediately prior to such issuance, but not including any shares of Common Stock issuable with respect to the conversion of the Series A Preferred Stock solely as a result of the adjustment to the Conversion Price resulting from the issuance of the Additional Shares causing the adjustment in question. No adjustment of the Conversion Price shall be made under this Section A.5(f)(i)(A) upon the issuance of any Additional Shares which are issued pursuant to the conversion of any convertible securities or the exercise of any warrants, options or other subscription or purchase rights therefor, to the extent any adjustment shall previously have been made with respect thereto pursuant to Section A.5(f)(i)(B) hereof.

(B) In the event the Corporation shall issue any securities, options, warrants or other rights directly or indirectly convertible into or exchangeable or exercisable for shares of Common Stock ("Convertible Securities") and the consideration per share for which Additional Shares may at any time thereafter be issuable pursuant to the terms of such Convertible Securities shall be less than the Series A Conversion Price in effect immediately prior to the issuance of such Convertible Securities, then upon such issuance of Convertible Securities, such Series A Conversion Price shall be adjusted as provided in Section A.5(f)(i)(A) hereof on the basis that: (x) all of the Additional Shares issuable upon the conversion, exchange or exercise of all such Convertible Securities shall be deemed to have been issued as of the date of issuance of such Convertible Securities and (y) the aggregate consideration for such Additional Shares shall be deemed to be the consideration received by the Corporation for the issuance of such Convertible Securities plus the minimum consideration receivable by the Corporation for the issuance of such Additional Shares pursuant to the terms of such Convertible Securities upon the conversion, exchange or exercise thereof. With respect to the issuance of any Convertible Securities which has resulted in an adjustment to the Series A Conversion Price pursuant to this Section A.5(f)(i), to the extent the right to acquire Additional Shares upon conversion, exchange or exercise of such Convertible Securities expires or is terminated without such conversion, exchange or exercise having been effected, such adjustment to the Series A Conversion Price shall be recomputed as if: (i) in the case of the issuance of Convertible Securities, the only Additional Shares issued were the shares of Common Stock, if any, actually issued upon the exercise, conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Convertible Securities plus the consideration actually received by the Corporation upon such exercise, conversion or exchange, and (ii) in the case of the issuance of options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such options, and the consideration received by the Corporation for the Additional Shares deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised options, plus the consideration deemed to have been received by the Corporation upon the issue of the Convertible Securities with respect to which such options were actually exercised.

(ii) Stock Dividend, Split or Subdivision of Shares. If, at any time after the Original Series A Issuance Date, the number of shares of Common Stock

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outstanding, is increased or deemed increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock (other than a change in par value, from par value to no par value or from no par value to par value), then, following the effective date fixed for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up, the Series A Conversion Price shall be appropriately decreased (but in no event shall the Series A Conversion Price be decreased below the par value of the Common Stock) so that the number of shares of Common Stock issuable upon conversion of the Series A Preferred Stock shall be increased in proportion to such increase in outstanding shares (on a fully diluted basis).

(iii) Combination of Shares. If, at any time after the Original Series A Issuance Date, the number of shares of Common Stock outstanding is decreased by a combination of the outstanding shares of Common Stock (other than a change in par value, from par value to no par value or from no par value to par value), then, following the record date fixed for such combination (or the date of such combination, if no record date is fixed), the Series A Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of the Series A Preferred Stock shall be decreased in proportion to such decrease in outstanding shares (on a fully diluted basis).

(iv) Recapitalizations, Reorganization, etc. If, at any time after the Original Series A Issuance Date, there shall be any recapitalization, capital reorganization, or reclassification involving the Common Stock (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend, subdivision, split-up, combination of shares or other event otherwise provided for in this Section A.5), provision shall be made (in form and substance satisfactory to the holders of a majority of the outstanding shares Series A Preferred Stock) so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive, upon conversion of their shares of Series A Preferred Stock, such shares or other securities or property of the Corporation or otherwise, to which a holder of Common Stock deliverable upon conversion would have been entitled to receive in such recapitalization, capital reorganization, or reclassification. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section A.5 with respect to the rights of the holders of the Series A Preferred Stock after the recapitalization, capital reorganization, or reclassification to the end that the provisions of this Section A.5 applicable after that event (including adjustment of the Series A Conversion Price then in effect and the number of shares purchasable upon conversion of shares of Series A Preferred Stock) shall be as nearly equivalent to those applicable before the event as may be practicable.

(v) Additional Shares. "Additional Shares" shall mean any shares of Common Stock or other securities directly or indirectly convertible into or exchangeable or exercisable for shares of Common Stock, other than:

- (A) Common Stock issued or issuable upon conversion of any shares of Series A Preferred Stock;
- (B) Shares of the Corporation's capital stock issued or issuable upon exercise, exchange or conversion of any warrants or other securities outstanding as of the date of the filing of this Certificate of Incorporation;

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(C) Common Stock issued to directors, officers, employees, consultants and advisors who provide or have provided bona fide services to the Corporation, pursuant to any options to purchase or rights to subscribe for such Common Stock outstanding as of the date of the filing of this Certificate of Incorporation or granted after such date pursuant to an option or rights plan, agreement or arrangement of the Corporation;

(D) Common Stock issued in transactions described in Section A.5(f)(ii), (iii) or (iv) hereof;

(E) Shares of Common Stock issued in connection with a Qualified Public Offering;

(F) Securities issued or issuable by the Corporation to persons or entities with which the Corporation has a business relationship, including, without limitation, corporate partner transactions, leasing arrangements and bank financings; provided, however, that such securities are issued for a primary purpose other than equity financing; and

(G) Securities issued or issuable by the Corporation in connection with: (i) the acquisition of another corporation, partnership, company, joint venture, trust or other entity by the Corporation or any subsidiary of the Corporation by means of a merger, consolidation, reorganization, stock acquisition, purchase of assets or other transaction or series of related transactions whereby the Corporation, or its stockholders of record immediately prior to the effectiveness of such transaction, directly or indirectly, own at least a majority of the voting power or assets of such other entity or the resulting or surviving corporation immediately after such transaction; (ii) the acquisition by the Corporation of intellectual property rights, including, without limitation, pursuant to intellectual property licenses or technology transfer or development arrangements; or (iii) the creation of a corporate or joint venture or any other strategic alliance with any other corporation or entity, including, without limitation, manufacturing, marketing or distribution arrangements.

(vi) Rounding. All calculations under this Section A.5(f) shall be made to the nearest cent (\$0.01) or to the nearest share, as the case may be.

(vii) Timing of Adjustments. In any case in which the provisions of this Section A.5(f) shall require that an adjustment shall become effective immediately after a record date for an event, the Corporation may defer until the occurrence of that event (A) issuing to the holder of any share of Series A Preferred Stock converted after such record date and before the occurrence of such event the additional shares of capital stock issuable upon such conversion by reason of the adjustment required by such event over and above the shares of capital stock issuable upon such conversion before giving effect to such adjustment and (B) paying to such holder any amount in cash in lieu of a fractional share of capital stock pursuant to Section A.5(e)(v) hereof; provided, however, that the Corporation shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares, in such case, upon the occurrence of the event requiring such adjustment.

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(g) Notice of Adjustments.

(i) In the event the Corporation shall propose to take any action of the types described in clauses (i), (ii), (iii) or (iv) of Section A.5(f) hereof, the Corporation shall give notice to each Series A Preferred Stockholder, by first-class, certified mail, return receipt requested, postage prepaid, which shall specify the record date, if any, with respect to any such action and the date on which such action is to take place. The notice shall also set forth such facts as are reasonably necessary to indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Series A Conversion Price and the number, kind or class of shares or other securities or property which shall be deliverable or purchasable upon the occurrence of such action or deliverable upon conversion of shares of Series A Preferred Stock. In the case of any action which would require the fixing of a record date, such notice shall be given at least ten (10) days prior to the date so fixed, and in case of all other action, such notice shall be given at least fifteen (15) days prior to the taking of such proposed action. Failure to give such notice, or any defect therein, shall not affect the legality or validity of any such action.

(ii) Whenever the Series A Conversion Price shall be adjusted as provided in Section A.5(f) hereof, the Corporation shall file, at its principal office, at the office of the transfer agent for the Series A Preferred Stock, if any, or at such other place as may be designated by the Corporation, a statement showing in detail the facts requiring such adjustment and the Series A Conversion Price that shall be in effect after such adjustment. The Corporation shall also cause a copy of such statement to be sent in the manner set forth in Section A.5(g)(i) hereof, to each Series A Preferred Stockholder at such holder's address appearing on the Corporation's records. Where appropriate, such copy may be given in advance and may be included as part of a notice required to be mailed under the provisions of Section A.5(g)(i) hereof.

(h) Reservation of Common Stock. The Corporation shall at all times have authorized and reserve, free from preemptive rights, out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series A Preferred Stock, a sufficient number of shares of Common Stock to provide for the conversion of all outstanding shares of Series A Preferred Stock.

(i) Status of Common Stock. All shares of Common Stock which may be issued in connection with the conversion provisions set forth herein shall, upon issuance by the Corporation, be validly issued, fully paid and nonassessable, free from preemptive rights and free from all taxes, liens or charges with respect thereto.

6. Voting Rights.

(a) General. The Series A Preferred Stockholders shall be entitled to vote, together with the Common Stockholders and any other class or series of stock then entitled to vote, as one class on all matters submitted to a vote of stockholders, in the same manner and with the same effect as the Common Stockholders, which voting rights shall not be cumulative. In any such vote, each share of Series A Preferred Stock shall entitle the holder thereof to one vote per share for each share of Common Stock (including fractional shares) into which each

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share of Series A Preferred Stock, as the case may be, is then convertible, rounded to the nearest one-tenth of a share.

(b) Protective Provisions of the Series A Preferred Stock. In addition to any other rights provided by law, so long as at least 250,000 shares of Series A Preferred Stock remain outstanding, the Corporation shall not do any of the following, without first obtaining the affirmative vote or written consent of the holders of a majority of the outstanding shares of Series A Preferred Stock:

- (i) materially alter, amend or change the rights, preferences, privileges or restrictions of the Series A Preferred Stock as a class;
- (ii) increase the authorized number of shares of Series A Preferred Stock;
- (iii) create any new class or series of shares of the Corporation having rights, preferences or privileges senior to the Series A Preferred Stock;
- (iv) engage in any merger, corporate reorganization, sale of control, or sale or other conveyance of all or substantially all of the assets of the Corporation;
- (v) engage in any transaction for the acquisition of any other company or other business entity or all or substantially all of the assets of another company or other business entity;
- (vi) declare, pay or issue a cash dividend to any holders of any class or series of capital stock of the Corporation;
- (vii) liquidate or dissolve or adopt a plan of liquidation or dissolution; or
- (viii) materially change the nature of the Corporation's business, business strategy or business plan or enter into a new line of business, except as approved by the Board.

#### PART B. COMMON STOCK

1. Voting. Each holder of Common Stock shall be entitled to one vote for each share of Common Stock held of record on all matters as to which holders of Common Stock shall be entitled to vote, which voting rights shall not be cumulative. In any election of directors, no holder of Common Stock shall be entitled to more than one (1) vote per share.

2. Dividends. The Common Stockholders shall be entitled to receive, out of funds legally available therefor, such dividends as may be declared from time to time by the Board, but only when, as, and if declared by the Board; provided that, so long as any Series A Preferred Stock is outstanding, the Corporation shall not declare or pay any dividend or make any distribution (whether in cash, shares of capital stock of the Corporation or other property) on



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the Series A Preferred Stock, unless prior thereto or simultaneously therewith an equal dividend shall be paid on the Common Stock (on an as-converted to Common Stock basis).

3. Rights on Liquidation, Dissolution, Winding-Up. In the event of any Liquidation, whether voluntary or involuntary, the Common Stockholders shall be entitled to participate in any distribution of assets to the stockholders to the extent provided in Section A.3 hereof.

4. Other Rights. Each share of Common Stock issued and outstanding shall be identical in all respects with each other such share, and no dividends shall be paid on any shares of Common Stock unless the same dividend is paid on all shares of Common Stock outstanding at the time of such payment. Except for and subject to those rights expressly granted to the holders of any class or series of capital stock having a preference over the Common Stock and except as may be provided by the laws of the State of Delaware, the holders of Common Stock shall have all other rights of stockholders, including, without limitation, the right to receive dividends, when, as, and if declared by the Board, out of assets lawfully available therefor.

#### ARTICLE V BYLAWS

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly authorized and empowered to make, adopt, amend, alter, change, add to or repeal the Bylaws of the Corporation, without any action on the part of the stockholders, except as otherwise provided herein and subject to the power of the stockholders of the Corporation to alter or repeal any Bylaw made by the Board.

#### ARTICLE VI ELECTION OF DIRECTORS

Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

#### ARTICLE VII PERPETUAL EXISTENCE

The Corporation is to have perpetual existence.

#### ARTICLE VIII AMENDMENTS AND REPEAL

Except as otherwise specifically provided in this Certificate of Incorporation, the Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and to add or insert other provisions authorized at such time by the laws of the State of Delaware, in the manner now or hereafter prescribed by law upon the approval of the Board and a majority of the stockholder entitled to vote in accordance with Section 242 of the General Corporate Law; and, except as otherwise provided herein, all rights, preferences and privileges of whatsoever nature conferred upon

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stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article VIII.

#### ARTICLE IX INDEMNIFICATION

The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Section from and against any and all of the expenses, liabilities and other matters referred to in or covered by said Section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

#### ARTICLE X LIMITATION OF LIABILITY

No person shall be liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as director; provided, however, that nothing contained in this Article X shall eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; (c) under Section 174 of the General Corporation Law; or (d) for any transaction from which the director derived improper personal benefit. If the General Corporate Law is subsequently amended to further eliminate or limit the liability of a director, then a director, in addition to the circumstances in which a director is not personally liable as set forth in the preceding sentence, shall not be liable to the fullest extent permitted by the amended General Corporate Law. For purposes of this Article X, "fiduciary duty as a director" shall include any fiduciary duty arising out of serving at the Corporation's request as a director of another corporation, partnership, joint venture, trust or other enterprise, and "personal liability to the Corporation or its stockholders" shall include any liability to such corporation, partnership, joint venture, trust or other enterprise, and any liability to the Corporation in its capacity as a security holder, joint venturer, partner, beneficiary, creditor or investor of or in any such other corporation, partnership, joint venture, trust or other enterprise.

No amendment to or repeal of this Article X shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

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